

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
: :
: :
-against- : **ORDER**
: :
JOAQUIN ARCHIVALDO GUZMAN : 09-cr-466(BMC)
LOERA, :
: :
Defendant. :
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COGAN, District Judge.

By Memorandum Decision and Order dated December 26, 2023, this Court denied defendant's motion for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 on the merits, and declined to issue certificate of appealability. Defendant did not apply for a certificate of appealability from the Court of Appeals or otherwise seek to appeal, and the time to do so has passed.

On March 6, 2024, defendant filed an untitled document in letter format annexing a number of exhibits which sought to "annul Mr. Guzman's sentence and order a new trial." The Government responded on May 6, 2024, arguing that the letter is a "second or successive" habeas corpus application and thus must be transferred to the Court of Appeals for its consideration.

The Government is correct. Section 2255(h) of Title 28, incorporating 28 U.S.C. § 2244, provides that an applicant must obtain leave from the Court of Appeals before filing a second or successive habeas corpus motion in federal district court. The Court of Appeals has held that "when a second or successive petition for habeas corpus relief or § 2255 motion is filed in a

district court without [such authorization], the district court should transfer the petition or motion to this Court in the interest of justice pursuant to [28 U.S.C. § 1631].” Liriano v. United States, 95 F.3d 119, 123 (2d Cir. 1996).

Accordingly, the Clerk of Court is directed to transfer defendant’s motion to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631.

SO ORDERED.

Brian M. Cogan

U.S.D.J.

Dated: Brooklyn, New York
August 14, 2024